



POLICE DEPARTMENT

January 18, 2013

MEMORANDUM FOR: Police Commissioner

Re: Detective Allen Roman
Tax Registry No. 923067
30 Precinct Detective Squad
Disciplinary Case Nos. 2010 1584 and 2011-5215

The above-named member of the Department appeared before me on July 25 and September 24, 2012, charged with the following:

Disciplinary Case No. 2010-1584

1. Said Detective Allen Roman, while on-duty and assigned to Internal Affairs Bureau Group 12, on or about May 10, 2009, wrongfully utilized Department computers for an unofficial purpose in that said Detective conducted two (2) unauthorized inquiries through Department computers on his brother without police necessity.

P.G. 219-14, Page 1, Paragraph 2 DEPARTMENT COMPUTER SYSTEMS

2. Said Detective Allen Roman, while on duty, while assigned to Internal Affairs Bureau Group 12, on or about May 10, 2009, at a location known to this Department, in New York County, having been given a lawful order by New York City Police Sergeant Kevin To, to refrain from getting involved in the Internal Affairs Bureau investigation concerning said Detective's brother, said Detective did wrongfully and without just cause refuse to comply with said lawful order.

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS

Disciplinary Case No. 2011-5215

1. Said Detective Allen Roman, assigned to the 30th Precinct Detective Squad, while on-duty, on or about January 18, 2011, did fail and neglect to render police services in said officer's assigned area, to wit, said officer failed to conduct a stop of suspects of a past robbery and failed to slow down in order to facilitate a satisfactory view of the suspects, for the complainant, during an attempted identification procedure.

P.G. 202-21, Page 1, Paragraph 8 DUTIES AND RESPONSIBILITIES

COURTESY • PROFESSIONALISM • RESPECT

The Department was represented by Jamie Moran, Esq., Department Advocate's Office, and Respondent was represented by Bruce Wenger, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges in Disciplinary Case No. 2010 1584, and a plea of Not Guilty to the subject charge in Disciplinary Case No. 2011-5215. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-1584

Respondent, having pleaded guilty, is found Guilty.

Disciplinary Case No. 2011-5215

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Detective Lisa Marquez, Detective Jose Oliveras and Detective Ericks Rodriguez as witnesses.

Detective Lisa Marquez

Marquez, a 19 year member of the Department assigned to the 30 Precinct

Detective Squad (PDS), testified that on December 23, 2010, Person A was robbed at gunpoint by three men. Marquez and her partner, Detective Jose Oliveras,

arrested one of the men, Person B. Person B was not in possession of a gun at the time of his arrest and he was later released from custody pending trial. Person B's two accomplices in the robbery had not been identified as of January 18, 2011.

She testified that she was on duty on the afternoon of January 18, 2011, when Respondent asked her to accompany him as he drove to an adjoining precinct to distribute "wanted posters" and as he drove to Secure Watch to pick up videos. Respondent and Marquez were in an unmarked radio motor patrol car (RMP) which had tinted windows. Marquez sat in the front passenger seat.

At about 6:20 p.m., while they were stopped at a traffic light at the intersection of 133 Street and Amsterdam Avenue, Marquez observed Person B standing outside a grocery (Department's Exhibits 1 and 2, photographs of the storefront) with two men who met the descriptions provided by Person A of the two men who, with Person B, had robbed him at gunpoint. Marquez told Respondent about the gunpoint robbery of Person A and asked him if he wanted to stop the men with her. Marquez asserted that Respondent told her, "No. I'm not stopping anyone with you."

Marquez then telephoned Oliveras and told him that she had observed Person B and the two possible suspects on the corner of 133 Street and Amsterdam Avenue and that she needed Oliveras to meet her and Respondent at 135 Street and Amsterdam Avenue because Respondent "did not want to get out of the car." Marquez then called Person A and asked him to meet her at the back of his apartment building in ten minutes. Respondent and Marquez picked up Person A at his building and drove him to 135 Street and Amsterdam Avenue, where Oliveras was supposed to meet them. However, Oliveras was not there.

Marquez and Respondent, with Person A seated in the rear of the RMP peering out the window, proceeded to canvass the area at a speed of five miles per hour. When they approached the corner of 133 Street and Amsterdam Avenue, Person A exclaimed, "Oh, I think I see them." Marquez told Respondent that if Person A made a positive identification of the two suspects, they would get out of the RMP and approach the suspects. Marquez asserted that Respondent told her, "Like I said before, I'm not stopping anyone with you and I don't see Detective Oliveras." Marquez asserted that when Person A asked to get a closer look at the suspects, Respondent sped up to 15 miles per hour. She stated that a canvass is normally conducted at a speed of less than five miles per hour. Marquez heard Person A say, "Wait, wait, wait, why are you driving so fast?" Marquez twice asked Respondent to stop the RMP, but Respondent continued driving.

Marquez testified that Respondent drove southbound on Amsterdam Avenue past 126 Street, made a U-turn and then drove northbound back to where she had observed the suspects. The suspects were no longer standing outside, so Marquez entered the grocery. Marquez was unsuccessful in locating the suspects. When Marquez came outside, she observed Respondent standing outside of the RMP with Oliveras who had arrived at the scene. Marquez and Respondent re-entered the RMP and continued to canvass the area with Person A looking for the suspects. Marquez then told Respondent to stop the car and to "get out of the car." She then told Oliveras to switch RMPs with Respondent.

On cross-examination, she stated that about six people were standing in front of the grocery conversing with each other. When she observed the suspects in this group, she asked Respondent, "Do you want to stop?" She explained that this is "terminology

used” meaning “do you want to get out of the car?” She agreed that the suspects could have left the location when she and Respondent left the area to pick up Person A.

Marquez testified that after Respondent told her that he was not going to engage in a stop of the suspects with her, she believed that Respondent was “scared at the moment.” Marquez agreed that Respondent cooperated when she wanted to pick up Person A from his apartment building and drive him to where she had spotted the suspects. She agreed that it would not have been wise for her and Respondent to attempt to apprehend possibly armed suspects without having their protective vests on. She agreed that she would have put Respondent in a potentially dangerous situation if they had attempted to arrest the suspects.

Marquez agreed that Respondent continued to drive her and Person A after they arrived at 135 Street and Amsterdam Avenue and discovered that Oliveras was not there to meet them. She did not agree that it would have been dangerous for her and Respondent to stop the possibly armed suspects without having their protective vests on. She agreed that when they drove past the grocery, Person A did not ask Respondent to stop the car. Marquez agreed that she was not concerned for Person A’s safety. Marquez testified that after Respondent and Oliveras switched vehicles, she did not speak negatively about Respondent to Oliveras in front of Person A. Marquez agreed that Person A had exclaimed, “Too dark, hold up,” because the tinted windows on the RMP were dark.

Detective Jose Oliveras

Oliveras, a 19-year member of the Department, assigned to the 30 PDS, testified that he has known Respondent for two years and has a very good relationship with him. Oliveras said that he had investigated robbery, grand larceny and burglary cases with Respondent, that Respondent's work is "very good" and that "it's been very well working with" Respondent. Oliveras has known Marquez for two years and has also worked on robbery, burglary and grand larceny cases with her.

Oliveras recalled that he was on duty on January 18, 2011, when, at about 6:30 p.m., he received a phone call from Marquez during which she requested that he meet her on the corner of 135 Street and Amsterdam Avenue. She also asked him for Person A's telephone number. Marquez told Oliveras that Respondent was not "comfortable getting out of the car."

Oliveras asked Detective Ericks Rodriguez to come with him and they drove to 135 Street and Amsterdam Avenue. They arrived there and waited. Marquez notified him via text message that she was in front of 133 Street and Amsterdam Avenue. When they arrived there, Marquez yelled out that the suspects were not inside the store and that "they're gone." Oliveras and Rodriguez drove off and conducted a canvas of the area. Several minutes into the canvas, Marquez called Oliveras and asked him to switch RMPs with Respondent. When he entered the RMP with Marquez and Person A, Marquez "yelled out" that Respondent "didn't stop the car, he didn't stop the car." Oliveras testified that Marquez was "just venting." Oliveras then realized that Person A was seated in the back seat. Person A told Oliveras that when they passed in front of the grocery, he observed a male wearing a red hoody who looked like one of the men who

had robbed him but when he tried to get a better look, Respondent had driven off fast. Person A told Oliveras that Respondent "was afraid." Oliveras apologized to Person A and then explained that "maybe there was a misunderstanding in communications" between himself and Respondent and Marquez. Oliveras stated that he had apologized to Person A because "I felt bad that there was a possibility the perpetrator was there and he wasn't apprehended. So I felt kind of embarrassed because the way the victim was upset that we didn't grab the guy."

On cross-examination, Oliveras agreed that he would be cautious in approaching men who were suspects in an armed robbery if he was alone with his partner. Oliveras also agreed that it would have been reasonable to request assistance from other officers but that whether to request assistance was in the responding officer's discretion. He agreed that it would have been unreasonable to approach men who were suspects in an armed robbery without wearing a bulletproof vest, although he has approached such suspects without wearing his vest. Oliveras stated that he noticed that Marquez was upset but that Marquez did not "badmouth" Respondent in front of Person A. He agreed that Person A noticed that there was tension between Respondent and Marquez.

Detective Ericks Rodriguez

Rodriguez, an 18-year member of the Department, assigned to the 30 PDS, testified that on January 18, 2011, Oliveras told him that they had to go to 133 Street and Amsterdam Avenue to assist Marquez and Respondent. Rodriguez was not aware that a gun had been displayed during the robbery of Person A. Rodriguez agreed that it would be a tactical concern for two officers to stop men who were potentially carrying a firearm

to conduct a show up by themselves and that it would not be unreasonable to call for assistance. Rodriguez recalled that when he and Oliveras arrived at the grocery, he saw Respondent standing outside the RMP and Marquez exiting the grocery. Rodriguez said his concern was to make sure Respondent and Marquez returned safely to their RMP.

Respondent's Case

Respondent testified on his own behalf.¹

Respondent

Respondent, a 15-year member of the Department, testified that he is presently assigned to the 30 PDS which investigates robberies and burglaries.

With regard to Disciplinary Case No. 2010 1584, Respondent testified that he was on duty assigned to Internal Affairs Bureau (IAB) Group 12 on May 10, 2009, when he learned that Person C had just been arrested by members of this Department and that an IAB Log Number had been generated regarding the conduct of the officers who arrested Person C.

Respondent approached his supervisor, Sergeant Kevin To, and requested that To permit him to take lost time so that he could leave his work assignment and go speak to Person C to find out what was going on. To denied his request to take lost time, told him that he could not leave his work assignment, and ordered him "to stay out of" IAB's investigation regarding the IAB Log Number that had been created as a result of Person C's arrest.

¹ Respondent also offered in evidence two Investigating Officer's Reports, dated January 20, 2011, [Respondent's Exhibit (RX) B] and January 27, 2011, (RX C), summarizing the Chief of Detectives Investigations Unit's interviews of Person A.

Respondent remained at his work assignment but he admitted that he did not comply with To's order that he refrain from getting involved in IAB's investigation. Instead, he conducted two unauthorized computer inquiries in IAB's IAPro computer database seeking information about his brother's case, specifically whether a witness in Person C's case had called IAB.

With regard to Disciplinary Case No. 2011-5215, Respondent testified that on January 18, 2011, he was assigned to pick up a video recording from Secure Watch and then drive to the 26 Precinct to drop off wanted posters. Marquez asked him if she could ride along with him. After they dropped off the wanted posters, they drove north on Amsterdam Avenue.

When they stopped at a traffic light at the intersection of 133 Street and Amsterdam Avenue (RX A, photograph of intersection), Marquez said, "There goes Person B." Respondent knew that Person B was a member of the "[REDACTED] Gang," and that Marquez had arrested him for a gunpoint robbery. Marquez told him, "Those two guys that are talking with him are probably suspects in my case." Marquez told him that Person B had committed the gunpoint robbery with two other men who were still wanted for the robbery. She said that the two men Person B was speaking to matched the descriptions of the wanted suspects. Marquez did not ask him to get out of the car or to apprehend the suspects.

While they were still at the traffic light, Respondent testified that he twice asked Marquez what she wanted to do, but Marquez did not answer. When the light turned green, Respondent turned left on 133 Street towards Broadway. Respondent drove a short distance and then pulled over and again asked Marquez what she wanted to do.

Respondent and Marquez were in possession of their firearms but they did not have their bulletproof protective vests with them. Marquez telephoned Person A. After she spoke with Person A, she asked Respondent to pick him up from his residence to conduct a showup.

While en route to Person A's residence, Marquez informed Respondent that she did not recover a firearm from Person B and that there was a "strong" possibility that the two suspects might have a firearm. Respondent requested that Marquez have Oliveras respond to assist them. Respondent denied that he told Marquez that he was "not going to stop."

Respondent picked up Person A and then drove to 133 Street between Amsterdam Avenue and Broadway. The grocery was on the southeast corner on his right side. Respondent stated that he stopped at a red traffic signal on the corner of 133 Street and Amsterdam Avenue, on the right side of the street, heading eastbound.

Respondent observed Person B talking on his cell phone while standing beside a mailbox with the two suspects standing behind Person B in front of the grocery. Marquez asked Person A if he recognized either of the two suspects, but Person A was not sure. Respondent recalled that he asked Marquez, "Where's Detective Oliveras?" She replied, "He's on his way, he's going to meet us here." When the light turned green, Marquez "requested me to stop at the corner for us to come out and snatch him and grab him." Respondent testified that he was concerned for Person A's safety and that he wanted to wait for assistance from Oliveras so he told Marquez, "We're not stopping at the corner, we're not going to grab anyone until Ol[iveras] arrives." He was concerned because the suspects might have had guns.

Respondent testified that neither Oliveras nor Rodriguez had arrived yet, and that when the light turned green, he turned right. He said, "As I took a right -- my window was a little open so I don't know if Person A looked through it but I -- I took a right to take a U-turn. So I went down a half a block to a block away, past the pharmacy, I cut a U turn and what I wanted to do was creep up on the parked cars along Amsterdam Avenue getting close to the store."

Respondent explained that he wanted to "creep" up by the parked cars so that Person A could see the suspects and if "he identifies them at that point I'm hoping in the back of my mind that backup is there, and if they weren't I was going to tell Marquez to get on the phone with Oliveras so we can snatch them up."

Respondent drove no more than one block, made a U turn and went back towards the suspects. He said that he was driving approximately five or ten miles per hour, or as fast as the traffic ahead of him would allow. Respondent denied that he had driven to 126 Street, in the vicinity of the 26 Precinct. He said that after he made the U turn, he returned to the area and "drove slowly up by the parked cars towards the individuals that were in front of the store."

Neither Respondent nor Marquez observed Person B or the other two suspects in front of the store. Respondent pulled over in front of the store. Marquez said, "They must have gone into the store" and exited the RMP. Respondent also exited the RMP, told Person A to stay in the RMP and followed Marquez inside the store. Neither of them saw the suspects inside. Respondent followed Marquez out of the store. He walked to the corner of 133 Street and Amsterdam Avenue and looked towards Covent Avenue

for the suspects but did see them. He walked back to the RMP and then saw that Oliveras and Rodriguez had arrived.

Marquez then returned to the RMP and they drove towards Broadway, to conduct a canvass, between 135 and 137 Street. Marquez then asked Respondent to switch RMPs. After he switched places in the RMPs, he continued to canvass the area.

On cross-examination, Respondent stated that he neither worked with Marquez prior to this incident nor did he have any disagreements with her. Respondent stated he was comfortable when he had worked with Oliveras.

He agreed that since he had been assigned to the 30 PDS for only six months, he was still in training. Respondent agreed that Person A had stated that he could not see the suspects from where they were but he did not ask Respondent to slow down.

Respondent denied that Marquez had asked him to stop and get out of the RMP when they initially observed the suspects.

Respondent stated that he did not watch the suspects while he made the U-turn because he thought Marquez was watching them and because he had to watch the road. Respondent denied that he drove all the way down to 126 Street before he made the U-turn. Respondent stated that his driver side window was down to his eye level. Respondent recalled that when he told Marquez that Person B no longer in front of the grocery, Marquez looked up.

FINDINGS AND ANALYSISDisciplinary Case No. 2010-1584

Respondent, having pleaded guilty, is found Guilty.

Disciplinary Case No. 2011-5215

It is charged that while he was on-duty on January 18, 2011, Respondent failed and neglected to render police services in his assigned area in that he failed to conduct a stop of suspects of a past robbery and failed to slow down in order to facilitate a satisfactory view of the suspects, for the complainant, during an attempted identification procedure.

With regard to that part of the charge that alleges that Respondent failed to conduct a stop of suspects of a past robbery, since a firearm had been displayed during the robbery Respondent and Marquez knew that there was strong possibility that one or both of the suspects might be armed and Respondent and Marquez were not wearing protective vests. The Patrol Guide Procedure governing "Protective Vests" mandates that a uniformed member of the service (UMOS) "MUST wear a protective vest, outside a Department facility, when" a UMOS is "(p)erforming enforcement duty in civilian clothes."² If Respondent and Marquez had conducted a stop of the suspects on the street Respondent and Marquez would have been performing enforcement duty in civilian clothes.

Marquez' telephone comment to her partner Oliveras that she needed him to come to the scene because Respondent "doesn't want to get out of the car," reflects her disgust with what she saw as Respondent's cowardice. However, since Respondent and Marquez

² Patrol Guide Procedure No. 204-18 (1) (b).

were not wearing protective vests and since no other UMOS were present at the scene to provide them with back up, what she viewed as Respondent's shamefully excessive fear of danger appears to a neutral observer to be merely prudent caution which was consistent with the Patrol Guide mandate delineating when a UMOS must wear a protective vest. When she was questioned about this safety issue on cross-examination, Marquez agreed that she would have put Respondent in a potentially dangerous situation if after stopping the suspects they had attempted to arrest them and that it would not have been wise for them to attempt to apprehend the possibly armed suspects when they were not wearing their bulletproof vests.

The Department further alleges that Respondent failed and neglected to render police services in his assigned area in that he failed to slow down in order to facilitate a satisfactory view of the suspects, for the complainant, during an attempted identification procedure. However, the record shows that Respondent did render substantial police services in his assigned area. Marquez agreed that Respondent cooperated in her attempt to perform an identification procedure by consenting to Marquez' request that he drive her to Person A's residence, by picking up Person A there, by canvassing the area with Person A looking for the suspects, and by driving Marquez and Person A back to the location where Marquez had spotted the suspects.

Once Person A entered the RMP, Respondent, as the operator, was as responsible as Marquez for Person A's welfare. If Respondent had brought the RMP to a stop or slowed the RMP to a crawl, and if Person A had been spotted and shot at as he was looking at the suspects through the window of the RMP, Respondent would have had to answer for any resulting harm to Person A. Thus, although the purpose of the drive

by was to see if Person A could identify either of the suspects, in conducting the drive by Respondent's and Marquez' paramount duty was to insure that no harm came to Person A.

Yet despite the fact that the drive-by of the potentially armed suspects posed a potentially dangerous, possibly even lethal, danger to Person A and to Respondent and Marquez, Respondent agreed to Marquez' request that he drive by the location where she had spotted the subjects and, after the initial drive-by, he agreed to Marquez' request that he make a U turn and drive back to the location. Thus, the sole complaint that Marquez had with Respondent's operation of the RMP, during the period before Person A was picked up and after he was picked up, was her claim that even though Person A had asked to get a closer look at the suspects, rather than slowing down, Respondent sped up the RMP to 15 miles per hour. This is the sole basis for the Department's allegation that Respondent "failed to slow down in order to facilitate a satisfactory view of the suspects" as he is charged with doing.

I find that Marquez' opinion that Respondent drove by the suspects too quickly must be examined in light of her disdain for Respondent's earlier caution regarding stopping the suspects. Also, Marquez' claim that the reason that Person A was not able to get a good look at the suspects was due to the rate of speed at which Respondent drove by the suspects must be viewed in light of Marquez' admission that Person A had also complained that the tinted windows on the RMP were so dark it was hard for him to see clearly.

Even if Respondent was overly cautious with regard to the speed at which he conducted the drive by, I find that this single discretionary action does not rise to the

level of actionable misconduct and that his consistent compliance with Marquez' requests shows that he did not fail and neglect to render police services in his assigned area.

Respondent is found Not Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on August 31, 1998. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Under Disciplinary Case No. 2010-1584, Respondent has pleaded guilty and admitted that even though Sergeant To had ordered him "to stay out of" the Department investigation regarding his brother's arrest, he did not comply with this order. Instead, he conducted two unauthorized computer inquiries in IAPro computer system seeking information about his brother's case.

The Assistant Department Advocate recommended that Respondent forfeit 15 vacations days as a penalty.

Respondent's action of disobeying a direct order issued by his IAB supervisor by conducting two unauthorized, personal inquiries in the IAPro computer database seeking information pertaining to an IAB Log regarding his brother's arrest constitutes serious misconduct.

In Case No. 85119/09 (June 30, 2010), a 15-year lieutenant with no prior disciplinary record forfeited 30 vacation days and was placed on one year

dismissal probation for making unauthorized inquiries on a Department computer system while he was assigned to IAB. In that case, the lieutenant accessed multiple IAB Logs in which he was named as a subject or in which he was otherwise personally involved in the incident that was the subject of the Log.

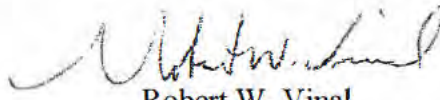
In Case Nos. 2010-0818 and 2011-5306 (January 24, 2012), a 25-year detective forfeited 20 pre-trial suspension days and 25 vacation days for failing to comply with an order issued by a supervisor to refrain from investigating a case which had been assigned to another detective and for utilizing a Department computer on three separate occasions to make unauthorized inquiries about the case in Department records. However, in that case, unlike here, the detective had previously been found guilty of misappropriating Department property, and was also found guilty of failing to properly safeguard a prisoner which resulted in the prisoner's escape.

Respondent here is a 14-year MOS who has no prior formal disciplinary record. It is recommended that Respondent forfeit 30 vacation days.

APPROVED

FEB 14 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE ALLEN ROMAN
TAX REGISTRY NO. 923067
DISCIPLINARY CASE NOS. 2010-1584 & 2011 5215

Respondent received an overall rating of 4.0 on his 2011-2012 performance evaluation, 3.0 on his 2010-2011 evaluation, and 3.0 on his 2009-2010 evaluation. He has no medals. [REDACTED]
[REDACTED] He has no formal disciplinary record. On July 29, 2010, he was placed on Level II discipline monitoring.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials